

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

NOV 04 2003

At _____ M
STEPHEN R. LUDWIG, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

In Re:)

ASBESTOS LITIGATION)
PRODUCTS LIABILITY)

Civil Action No. MDL 875
No. _____

This Document Relates to:)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SITTING IN HAMMOND INDIANA

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DEFENDANT'S, TECHINT TECHNOLOGIES, MOTION TO DISMISS

Comes now the defendant, Techint Technologies, by counsel, Andrew R. Wolf of Bruce P. Clark and Associates, and moves this Court, pursuant to Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure, for an order dismissing each plaintiff's causes of action against said defendant with prejudice, and in support thereof states as follows:

1. On or about the 10th day of April, 2003, counsel for the defendant, Techint Technologies, filed a detailed Motion to Compel Discovery against each of the above-listed plaintiffs.

2. On September 5, 2003, the Court Ordered said plaintiffs

to provide complete and unevasive responses, signed under oath, to said defendant's written discovery within forty-five (45) days of the Court's Order.

3. As of October 24, 2003, several days more than the 45-day deadline imposed by the Court, said responses had not been received by counsel for the defendant.

4. Counsel for the defendant originally served the subject Interrogatories and Request for Production on counsel for the plaintiffs on August 8, 2002, in an effort to learn, inter alia, what the product connection was between each plaintiff's alleged injuries and the defendant, as well as the nature and extent of each plaintiff's alleged injuries. More than a year later, the plaintiffs have not disclosed the same, unduly prejudicing the defendant by keeping it in an extreme number of unwarranted and unsupportable lawsuits.

5. Federal Rule of Civil Procedure 41(b) provides that a defendant may move for dismissal of an action or of any claim against the defendant for the plaintiff's failure to prosecute or to comply with the Federal Rules.

6. Each of the above-listed plaintiffs has disregarded the Court's September 5, 2003, Order compelling discovery, failing to comply with the same.

7. The plaintiffs have demonstrated a pattern of delay and evasiveness. The defendants' written discovery served in

August, 2002, was responded to on January 24, 2003, only after the defendant filed its first Motion to Compel and after the Court set a hearing date of January 24, 2003, for the same and the parties had flown to Philadelphia for the hearing. To exacerbate matters, the responses served were inadequate and evasive, as detailed in the defendant's April 10, 2003, Motion to Compel, and did nothing to aid the defendant in learning why it is in these suits. Moreover, the responses were unsworn and not certified as to when they were served.

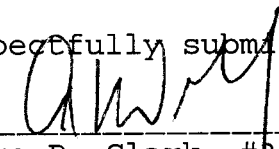
8. The pattern of undue delay and evasiveness has prejudiced the defendant profusely in that the defendant has had to expend an inordinate amount of resources in defending multiple lawsuits, many of which were filed nearly three years past, for which the plaintiffs have provided absolutely no support, and for which the defendant sees no disposition on the horizon.

9. Accordingly, dismissal of these actions is warranted under both Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant Techint Technologies, by counsel, requests that this Court enter an Order dismissing each of the above-listed plaintiffs' causes of action against said defendant, expressly determine that there is no just reason for delay, expressly direct entry of final judgment in favor of said

defendant against each plaintiff with prejudice, for all other just and proper relief.

Respectfully submitted,

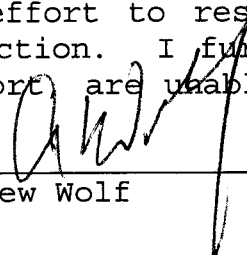


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F.R.C.P. 37(a) and L.R. 26.1(f) CERTIFICATION

I hereby certify that I attempted to confer with counsel for the plaintiffs in a good faith effort to resolve this ongoing discovery dispute without court action. I further certify that the parties, after reasonable effort, are unable to resolve said dispute.



Andrew Wolf

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2003, I caused a copy of the above and foregoing Motion to Dismiss upon:

Michael Cascino
CASCINO VAUGHAN LAW OFFICES, LTD.
220 South Ashland Avenue
Chicago, IL 60607

by depositing the same in the United States Mail with sufficient first-class postage affixed and a Notice of Filing was served upon:

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